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Pre-sessional open-ended working group
on a draft declaration on the right
and responsibility of individuals,
groups and organs of society to
promote and protect universally
recognized human rights and
fundamental freedoms
18-29 January 1993

TECHNICAL REVIEW OF THE FIRST READING TEXT

Report of the Secretary-General
prepared pursuant to paragraph 6 of Commission
on Human Rights resolution 1992/82

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Introduction

1. On the recommendation of its open-ended working group on the drafting of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, the Commission on Human Rights, in paragraph 6 of resolution 1992/82, requested the Secretary-General to undertake a technical review of the first reading text of the draft declaration in accordance with the guidelines contained in the report of the working group (E/CN.4/1992/53 and Corr.1, annex III) and to distribute the results to all States Members of the United Nations and members of competent specialized agencies, to persons chairing the human rights treaty bodies and to interested intergovernmental and non-governmental organizations.

2. The guidelines established by the working group relating to the technical review read as follows:

"Technical review

Bearing in mind General Assembly resolution 41/120 and in accordance with United Nations technical standards and practices, the technical review of the draft declaration should:

1.Identify overlaps and repetitions between and within draft articles;

2.Harmonize the different language versions;

3.Check for consistency in the text, including the use of key terms and the use of gender-neutral language;

4.Make textual and editorial suggestions and recommendations as to how any overlaps or inconsistencies identified might be corrected by the Working Group before the submission of the draft declaration;

5.Compare the standards in the draft declaration with those in other widely-accepted human rights instruments.

The technical review should not enter into areas of substance but should be confined to the technical aspects of the draft."

3. Pursuant to this request, the Centre for Human Rights undertook the task of carrying out its own internal technical review of the first reading text of the draft declaration. In addition, the assistance of the Under-Secretary-General for Legal Affairs, the Legal Counsel, was requested on matters within the Counsel's area of competence relating to the draft declaration.

4. The present document contains the comments and suggestions of both general and specific character relating to appropriate chapters and/or articles of the English, French, Russian and Spanish versions of the first reading text of the draft declaration.

I. GENERAL COMMENTS AND SUGGESTIONS

5. In his observations, the Legal Counsel expressed the view that such a technical review could be more useful if conducted at a later stage when the substance of the subject-matter has been classified and the draft text of the declaration has undergone a revision. Therefore, the comments of the Legal Counsel were necessarily limited by these circumstances.

6. The Legal Counsel recommended that, unless there were special reasons, the articles should be numbered consecutively instead of separately under each chapter, since the present approach could create problems of interpretation. Whether it was necessary to subdivide the declaration into chapters should also be considered.

7. According to the established practice, when an instrument is divided into chapters, those should in principle have a title. Also, even more common is the use of the terms "section" or "part".

8. The use of gender-neutral language should be ensured throughout the French version of the first reading text of the draft declaration. It relates in particular to chapter I, article 3; chapter II, articles 1, 2, 3 and 4; chapter III, articles 1, 2 and 3; chapter IV, articles 1 and 2; and chapter V, articles 3 and 5, where the word "chacun" should be replaced by the words "toute personne".

9. The Legal Counsel noted that a variety of terms had been used in the draft text, e.g., "no one", "each State", "everyone", "all persons", "individuals, groups and associations", "everyone, individually or in association with others", and "all members of the international community". A uniform terminology should be found to ensure consistency and to delineate the scope of the subject. It is also important that the term selected should be consistent with the title of the declaration (see also para.11 below).

10. The Legal Counsel also stated that while the title of the draft declaration did not include "State", several articles referred to State responsibility, for example, chapter I, article 2; chapter II, article 5; chapter IV, article 3. The question to be considered is whether the role of the State should hence be reflected in the title of the draft declaration.

11. It may be observed in this connection that the term "organs of society" which is used in the title of the draft declaration and only once thereafter (in chapter V, article 4) is new for the terminology of human rights instruments. Moreover, in the Spanish version, this term is translated by "instituciones" (institutions), a word also used to translate in Spanish the word "associations" in the expression "individuals, groups and associations" found in the fifth and ninth preambular paragraphs. The Working Group might therefore consider whether the terms "organs of society", "associations" and "organizations" should be defined and afterwards be harmonized in all language versions (see also para.9 above and paras.19 and 21 below).

12. According to the Legal Counsel, it seems that different meanings could be given to the terms "human rights and freedoms" and "human rights and fundamental freedoms"; in most places, they are qualified by [universally recognized]; in other places, no such qualification is added and various

expressions were used; for example, in chapter II, articles 1, 2(a), 3 and 5, para.3; in chapter III, articles 2 and 3; in chapter IV, articles 2(a) and 3(a); in chapter V, articles 2, 3 and 5, para.2. Since the expression "human rights and freedoms" is a key term in the text, its meaning should be maintained in a consistent manner.

13. In order to harmonize the title with the rest of the draft declaration, the words "universally recognized" contained in the title should also be put into brackets.

II. COMMENTS AND SUGGESTIONS RELATING TO THE PREAMBLE

14. The Legal Counsel expressed the view that the order of the preambular paragraphs should be reorganized so that they proceed from general to specific objectives. Also, paragraphs expressing the same ideas should be combined.

15. For consistency with already adopted instruments, the Working Group may consider the inclusion, in the first preambular paragraph, of several additional elements with regard to which no distinction should be admitted: descent and ethnic origin (see article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination); conviction, nationality, age, economic position and marital status (see article 1, paragraph 1, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families); and disability (see article 2, paragraph 1, of the Convention on the Rights of the Child).

16. In the second preambular paragraph of the English, Russian and Spanish versions, the word "persons" could be deleted.

17. In the French version, the last words of the third preambular paragraph should be amended as follows to reflect more closely the English original: "adoptées au sein de l'ONU et des organisations qui lui sont reliées.".

18. Editorial point: in the fourth preambular paragraph, the word "further" should be replaced by "also".

19. In the Spanish version, the word "associations" in the expression "individuals, groups and associations" in the fifth preambular paragraph (second line) should be harmonized with other language versions (see also para.11 above).

20. At the end of the sixth preambular paragraph, the words "with these rights" could be added for better wording. This applies to the English and Russian versions only.

21. In the Spanish version, the word "associations" in the expression "individuaals, groups and associations" in the ninth preambular paragraph (first line) should be harmonized with other language versions (see also para.11 above).

22. It is proposed to replace the word "Declares" at the end of the preamble by one of more commonly used formulations, like "Proclaims this Declaration" or "Proclaim this Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms".

III. COMMENTS AND SUGGESTIONS RELATING TO THE ARTICLES

23. The expression "individually or in association with others", which has been unbracketed and agreed upon by the Working Group on 20 January 1992 (see para. 55 of the 1992 report of the Working Group), appears 13 times in the first reading text. However, in some places of the English version, the word "or" is replaced by "and" (articles 2 and 3 of chapter I; article 3 of chapter II; articles 1, 2 and 3 of chapter III; and article 5 of chapter V), while in articles 1 and 2 of chapter II the words "as well as together with others" were used instead of "or in association with others". To ensure uniformity, these divergencies should be eliminated.

24. These remarks apply also to varying degrees to the French, Russian and Spanish versions.

Chapter I

Article 1

25. In the French version, the square brackets around "individually or in association with others" should be deleted.

26. In the French version, the word "châtié" could be replaced by "puni".

Article 3

27. Since this article speaks of the "right" which, in the title of the draft declaration, precedes the "responsibility", the Working Group may wish to reconsider the order of paragraphs in chapter I so that the present article 3 becomes article 1.

Chapter II

Article 1

28. For uniformity, the words "all persons" in the English and Russian versions should be replaced by "everyone".

29. In the French version, the words "avoir connaissance" could be replaced by "connaître" for better wording.

Article 3

30. The Legal Counsel observed that this article referred to "these rights and freedoms". The meaning of "these" is not clear; it could refer to a number of things: the rights and freedoms referred to in articles 1 and 2 of chapter II, those contained in chapter II, or those referred to in the draft text as a whole.

Article 5

31. In paragraph 2(b) it is proposed to replace the words "established by" by "established under" (in French, to replace the word "par les" by "en vertu des") and to delete the adjective "official" as redundant. In the English version the word "report" should be plural.

32. In paragraph 3 of the English version, the words "law enforcement officers" differ from the established term "law enforcement officials" (see Code of Conduct for Law Enforcement Officials of 1979). An appropriate correction is also needed in the Russian text.

33. Also in paragraph 3, the expression more generally used is "members of the armed forces" rather than "personnel of the armed forces" (see article 43 of the Protocols Additional to the Geneva Conventions of 12 August 1949).

34. In the French version of paragraph 3, the words "fonctionnaires de l'Etat" could be replaced by "agents de la fonction publique", as it has been used in a similar context in article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment.

Chapter III

Article 2

35. Since the distinctions pertaining to non-discrimination have been mentioned only in the preamble, the term "on a non-discriminatory basis" used in this article does not seem to be clear enough. The Working Group may therefore wish to consider the inclusion of those distinctions in the operative part of the draft declaration.

36. Editorial suggestion: to replace, in the second sentence, the word "and" before the word "organizations" by "as well as to".

Article 4

37. In the second paragraph, the word "generally" does not appear in the French version.

38. Editorial suggestion: to replace "and" after the words "goods and services" by a semicolon.

Chapter IV

Article 2

39. In the French version, sub-paragraph (f) appears which does not exist in other language versions.

Article 3

40. In sub-paragraph (a), the word "adverse" before "discrimination" seems to be redundant.

41. In sub-paragraph (b), it is proposed to replace the word "development" by "establishment".

42. In the French version of sub-paragraph (b), the word "ombudsmen" should be added between brackets after the word "médiateurs".

43. In the French version of sub-paragraph (c), the words "présomptions raisonnables" should be replaced by "motifs raisonnables de croire".

Chapter V

Article 1

44. In the view of the Legal Counsel, since articles 1 and 4 of chapter V deal with the same subject matter, they might be merged into one article or be contained in two separate paragraphs of the same article.

45. Editorial suggestion: to modify the phrase in brackets to read either"[and other international human rights instruments]" or "[and other international instruments in the field of human rights]".

Article 5

46. According to the Legal Counsel, article 5 does not seem to belong to chapter V.

47. The Legal Counsel also noted that this article used the word "duties" whereas the word "responsibility" was used elsewhere. A consistency should be maintained unless there are special reasons.